

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,584

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a forty-four-year-old man with a twelfth grade education. He has a spotty work history as a mechanic, carpenter, laborer, tile and linoleum installer and gas station attendant. He has spent many months of his adult life in penal institutions.
2. In 1982, the petitioner was seriously injured when his car ran underneath a truck. He was in a coma for eight days and in intensive care for thirteen days. Among his injuries (which also included severe injuries to his head and internal organs) were whiplash to his neck and trauma to his back and right leg. Since that time he has continued to have pain and stiffness in his neck, left shoulder, back and right leg and hip. X-rays taken in 1993 and 1995 show only mild dextroscoliosis of the spine and minor changes in his hip. Nevertheless, he has continued to experience both tenderness, pain and spasms in his head, neck, shoulder and leg.
3. His physician noted during an exam in September of 1995, that the petitioner's head and neck were tender at the C4-7 level, that paraspinal spasms were evident in the cervical and lumbar regions, that he had a decreased range of motion in the left shoulder and that he walked with an antalgic gait. He felt that the petitioner could not return to his prior laboring jobs because he could not sustain the physical effort of that type of work. He also felt that the petitioner's physical and emotional impairments in combination would keep him from doing other types of work as well.
4. A physician who examined the petitioner for DDS in February of 1995, also noted some minimal

limitations of range of motion in the petitioner's left shoulder and lumbar spine and noted that he had an antalgic gait which favored the right leg. He was unable to draw any conclusions about the impairment on the basis of one exam.

5. The evidence clearly shows that the petitioner has severely impaired vision in his left eye due to a recurrent problem with corneal ulcers which resulted from a trauma to the eye in 1986. He has had several surgeries to correct his vision but none resulted in long term success. He needs a corneal transplant but has not been able to afford one. Although he still drives, he cannot do so for long periods of time because he lacks depth perception. Bright lights cause stabbing pain to his eye and he wears sunglasses when he is in light.

6. The medical evidence also demonstrates chronic sinusitis which has been treated with both medication and surgery with only partial relief. The petitioner continues to suffer chronic headaches based on this ailment.

7. A psychiatric consultation in July of 1995, which was performed by a psychologist, concluded that the petitioner has chronic pain syndrome as a result of the auto accident, an "antisocial personality disorder" and dull normal intelligence. He felt these problems caused him to feel frustrated, interfered with his ability to concentrate and would cause him difficulty in getting along with co-workers. He noted that when the petitioner arrived at the interview, he was slumped over and stood with difficulty.

8. The petitioner takes a number of medications for pain, depression and insomnia, including Diazepam, Tylenol, Xanax and Naprosyn. He says he cannot sit for more than thirty minutes at a time without needing to change position, cannot stand for more than five minutes without pain in his leg and cannot walk for more than two blocks before he passes out from pain. The patient's treating physician agrees that he is limited to sitting or standing for a total of no more than one to two hours per day. He also stated that the medications used by the petitioner cause sedation, drowsiness and gastro-intestinal upset. The petitioner's assertions about his physical restrictions are found to credible.

9. The petitioner does not sleep well at night, rests most of the day and self-medicates with alcohol each evening to try to get to sleep. The pain in his back and hip is so severe that it often takes one to two hours to get him out of bed in the morning. His level of pain fluctuates during the day but is always present. He experiences more intense severe pain two or three days per week during which he must lie in bed all day. On good days he sits in a recliner and watches TV or plays cards. His pain complaints are credible and were corroborated by a friend who lives with him.

10. The medical evidence and credible testimony of the petitioner indicate that due to a combination of severe medical impairments, he will be unable to either return to his former occupations or even to perform a sedentary job based on pain, restricted range of motion, and inability to concentrate and get along with co-workers. He already has or will be unable to do any of these activities for at least twelve months. The petitioner had demonstrated that he does not have the residual functional capacity to engage in any substantial gainful activity.

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The petitioner has a combination of severe impairments which has prevented him or will prevent him from engaging in substantial gainful activity for at least one year. As such, he meets the definition of disability for Medicaid.

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